



United States Attorney  
Southern District of New York

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March 31, 2023

**Via ECF & Email**

The Honorable Mary Kay Vyskocil  
United States District Court  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, New York 10007

**Re:    *United States v. Seth Fishman, 20 Cr. 160 (MKV)***

Dear Judge Vyskocil:

The Government respectfully submits this letter-motion seeking leave to supplement the record of the March 6, 2023 forfeiture hearing, in light of the colloquy between Your Honor and the Government regarding the representations in Exhibit A to the Declaration of Sarah Mortazavi (“Mortazavi Declaration”), which was submitted in response to the defense’s proposed exhibits.

**Background**

As the Court is aware, four days in advance of the scheduled forfeiture hearing, Seth Fishman (“Fishman” or the “defendant”) produced thousands of pages of previously-undisclosed documents in support of his declaration, purporting to set forth sales figures for non-drug items, like bloodwork and needles, and “over the counter” drugs that Fishman claimed to have distributed lawfully without a prescription. *See* Fishman Decl. ¶¶ 33-36. On March 5, 2023, the Government submitted in response Exhibit A to the Mortazavi Declaration, which consisted of a chart listing (among other things) sales figures for each of the so-called “over the counter” drugs the defendant claimed had been lawfully distributed, with webpages indicating—contrary to Fishman’s representations—that these drugs require a prescription, or are otherwise unapproved and are, thus, adulterated and misbranded. The value of all such adulterated and misbranded drugs is properly included in the forfeiture figure.

During the forfeiture hearing, this Court characterized the Government’s reliance on Internet searches as “inherently unreliable.” Fishman Forf. Hearing Tr. at 118:2-7. The Government stated in response that more time was necessary to “go to the FDA [Food and Drug Administration], have them do the research and then submit a declaration” to further substantiate the Government’s position that many of the drugs Fishman identified are, in fact, adulterated and misbranded. The Government further explained: “In the time we were given, that was not possible, and so we did [what] we could in preparation for this hearing and in the interest of not adjourning these proceedings.” *Id.* at 118:8-13. This Court then asked the Government if there were any

images of seized drugs that the Government could produce to the Court as reliable evidence indicating that a drug required a prescription, or was otherwise adulterated and misbranded. The Government stated: “We may, your Honor, but we would need time to gather that.” *Id.* at 118:14-22. The Court noted in response: “Yes. I appreciate that.” *Id.* at 118:23.

### Discussion

As previewed at the hearing, the Government is prepared to supplement the record in direct response to the Court’s inquiries. The Government respectfully requests that the Court admit a limited set of materials to assist in the Court’s calculation of the final forfeiture figure. The forfeiture calculation necessarily requires the Court’s determination of which drugs are adulterated and misbranded because they are, for example, not FDA-approved or require a prescription. There is good cause to admit and consider these records given the timing and volume of the production of defense exhibits in advance of the forfeiture hearing, and in light of the Court’s inquiries during the hearing itself.

Attached as Exhibit A to this letter is a declaration from Diana Link, a Veterinary Medical Officer Master Reviewer at the Food and Drug Administration Center for Veterinary Medicine, stating that several of the drugs identified by Fishman as “over the counter” are in fact drugs that are not approved for use in horses, or are approved but require a prescription. The Government contends that these categories of drugs, which Fishman put at issue in his declaration, are adulterated and misbranded.

Attached as Exhibit B to this letter is a declaration from Federal Bureau of Investigation Special Agent Bruce Turpin attaching true and correct copies of photographs of seized drugs collected over the course of this investigation, whose respective labels identify the drug as of a type requiring a prescription. These photographs were produced in discovery on or about June 30, 2020, September 28, 2020, and September 30, 2020. The appended photographs were taken of drugs seized from the residences and/or vehicles of convicted defendants Lisa Giannelli, Donato Poliseno,<sup>1</sup> Erica Garcia, and Rebecca Linke.<sup>2</sup>

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<sup>1</sup> Donato Poliseno was charged and convicted in the related matter *United States v. Grasso et al*, 20 Cr. 163 (PKC) (S.D.N.Y.).

<sup>2</sup> Certain of the drugs identified in the Link declaration are likewise identified in the Turpin declaration. Eliminating all duplicate drug items, the complete list of drugs that Fishman has wrongly identified as “over the counter,” but which are, in fact, forfeitable adulterated and misbranded drugs is as follows: SFX 311; SFX 331; SFX 335; SFX 409; SFX 420; SFX 421; SFX 422; SFX 425; SFX 427; SFX 428; SFX 429; SFX 430; SFX 501; SFX 503; SFX 508; SFX 516; SFX 517; SFX 801; SFX 806; SFX 816; SFX 822; SFX 823; SFX 905; SFX 907; SFX 910; SFX 911; SFX 912; SFX 913; SFX 914; SFX 918; SFX 919; SFX 926; SFX 1301; SFX 1302; SFX 1401; SFX 1402; SFX 1403; SFX 1406; SFX 1407; SFX 1408; SFX 1411; SFX 1412; SFX 1501; SFX 1502; SFX 1506; SFX 1507; SFX 1508; SFX 1510; SFX 1511; SFX 1606; SFX 1607; SFX 1719. Based on the Avimark sales data offered by the defense, the total sales figures for these drugs amounts to \$2,169,055.25, and is properly included in the forfeiture figure, in addition to

At the forfeiture hearing, and in a supplemental March 6, 2023 letter to the Court, the Government relied upon a demonstrative that set forth (in relevant part) the Avimark sales figures for Equestology's domestic sales. The Government's chart included a line deducting from the total any sales of non-drug items—*i.e.*, bloodwork, needles, tubes, and other equipment—and drugs that are not adulterated or misbranded (*e.g.*, approved or “over the counter” drugs). The Government's initial calculation of the applicable deduction at the hearing was \$967,017. Based on the appended Link and Turpin declarations, the Government now contends that the proper deduction from the Avimark sales data totals **\$1,254,436.59**.

Below is an amended summary chart reflecting the increased deduction, and an adjusted total forfeiture amount.

<b>OPTION A: TOTAL ADJUSTED AVIMARK/FOREIGN/NAVARRO SALES</b>	
+DOMESTIC AVIMARK SALES RECORDS (that do not include Navarro) <sup>3</sup>	\$11,489,667.50
+FOREIGN SALES FROM BANK RECORDS <sup>4</sup>	\$2,698,873.79
+FOREIGN SALES FROM INVOICES <sup>5</sup>	\$261,700
+PANAMA BANK ACCOUNTS <sup>6</sup>	\$2,283,036.83
<b>SUBTOTAL</b>	<b>\$16,733,278.12</b>
-- <i>Bloodwork, Needles, Syringes, and non-drug items</i> <sup>7</sup>	\$1,254,436.59.
<b>TOTAL FOR COUNT ONE</b>	<b>\$15,478,841.59</b>
+NAVARRO SALES <sup>8</sup>	\$85,565
<b>TOTAL FOR COUNTS ONE AND TWO</b>	<b>\$15,564,406.53</b>

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the sales of all other drug items reflected in the Avimark sales data, which Fishman has effectively conceded are adulterated and misbranded.

<sup>3</sup> SFX 1800; Fishman Declaration ¶ 28.

<sup>4</sup> GX 304F-315F; Fishman Decl. ¶¶ 47-48.

<sup>5</sup> Rubino Decl. ¶ 17; GX 110F, 601F-604F.

<sup>6</sup> Rubino Decl. ¶ 16; GX 202F, 912-T.

<sup>7</sup> See SFX 200, 300, 400, 500, 600, 700, 800, 900, 1000, 1100, 1200, 1300, 1400, 1500, 1600, 1700; Fishman Declaration ¶¶ 10, 31-37; Mortazavi Declaration ¶¶ 2-6, & Exhibit A to Mortazavi Declaration; Link Declaration; Turpin Declaration & Exhibits B1-B29.

<sup>8</sup> Rubino Decl. ¶¶ 19, 19.a.-f; GX 801F, 901F-905F.

Wherefore, the Government respectfully requests that the Court grant the Government's request to supplement the hearing record with the attached declarations and exhibits, for the reasons explained herein.

Very truly yours,

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United States Attorney

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